

# Garbage hauling raises liability questions

Bellingham Herald, 2/19/90

## County could step into legal 'bear trap'

### Trucking our trash



Half or more of Whatcom County's garbage now winds up in an Eastern Washington dump. Where it's going, who stands to gain, the questions and risks involved and what nearby residents have to say about getting our garbage are among the matters discussed in a four-day series continuing today.

Stories by TRASK TAPPERSON  
of the Herald staff

PASCO — For some Whatcom Countians, the long-haul deal that has 100 to 145 tons of their garbage trucked six days a week to a landfill here may give temporary relief to a modern-day affliction known as The NIMBY Syndrome — Not In My Back Yard.

For others, however, out of sight doesn't necessarily mean out of mind.

Opinions vary among environmental attorneys and regulators. But many agree that co-mingling Whatcom County trash with wastes from other sources could leave Whatcom County private and public interests liable to dump lawsuits or cleanup costs.

No matter, they say, that the long-haul deal specifically bars shipping

hazardous wastes, or that control over practices at the landfill is 300 miles beyond Whatcom County's jurisdiction.

The federal government's principal weapon to recover pollution cleanup costs and impose penalties is the federal Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), better known as the Superfund law. It allows environmental officials to look beyond immediate sources of contamination when placing blame.

If, say, groundwater at or near a landfill becomes contaminated, the authorities can make a move on the wallet of the dump operator as the most obvious target, according to at-

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## Superfund probe unlikely to close dump

SPOKANE — State Department of Ecology agents soon will begin poking in earnest around the Pasco Sanitary Landfill to find out exactly what's buried in the newly declared Superfund site and how it will be cleaned up.

Two weeks ago, private interests in Whatcom County began trucking half or more of the county's non-hazardous solid waste eastward for burial in the 208-acre dump.

Will the U.S. Environmental Protection Agency's declaration last Thursday affect that operation, or portend any problems for the shippers?

According to Claude Sappington,

the agency's top waste management official in Eastern Washington:

- The Superfund declaration is not likely to result in the dump's closure, at least until a thorough on-site investigation is completed — and then only if new and significant discoveries are made.

- The investigation may not be limited to the five known trash-disposal cells in which at least 47,000 drums of hazardous wastes were buried, with state approval, from 1972 until early 1974.

Included may be areas in which non-hazardous waste is being interred, including the 100 to 145 tons

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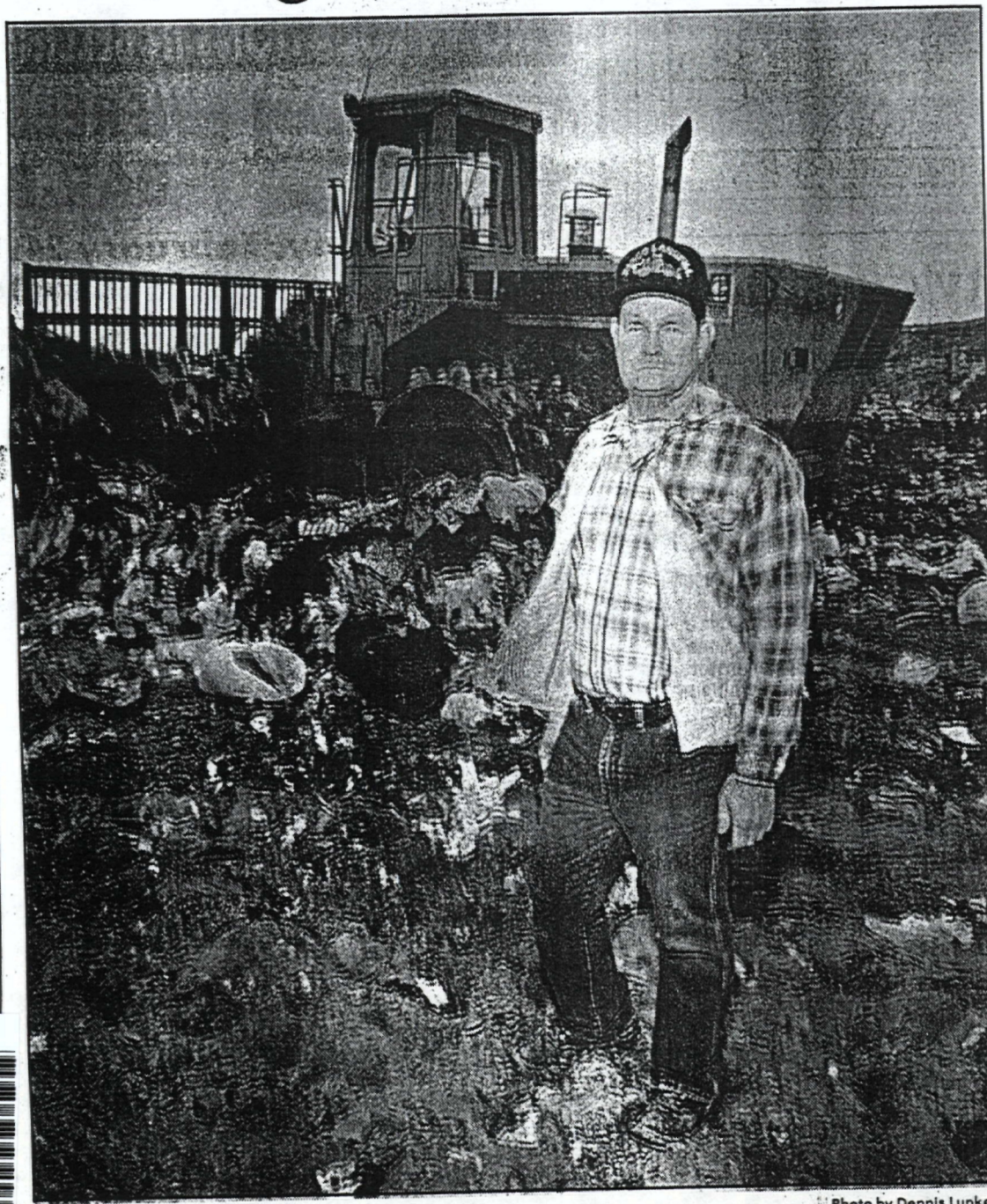


Photo by Dennis Lupkes

Pasco Sanitary Landfill owner Larry Dietrich supervises bulldozer operator Gary Standish as he shapes the trash of Whatcom County residents and others before

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# Superfund probe unlikely to close dump

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shipped six days a week from Whatcom County.

• It may be a year, perhaps several years, before state and federal officials decide who will foot the cleanup bill and perhaps pay a pollution penalty.

• It is conceivable the Whatcom County-based municipal waste shippers, and possibly even their local governments, could be held liable for some of the cleanup bill. But if they were, it most likely wouldn't amount to much of the total.

The hazardous wastes are chlorinated solvents dumped by Resource Recovery Corp., a subsidiary of Seattle-based Chemical Processors Inc., according to David Bennett, National Priorities List administrator in the EPA's Region 10 office in Seattle. In addition, there is a trench containing ash from waste burned earlier, he said.

Landfill owner Larry Dietrich said the material, from Seattle and Portland, consists of paint waste, 240 residues and barium sludge created in the manufacture of chlorine, along with traces of mercury.

The drums are buried in five disposal cells at scattered sites covering less than 15 acres altogether, Dietrich said.

Because the locations are known, and haven't been used as burial zones for years, the Whatcom County shippers are in no way affected, Dietrich said.

Sappington isn't so sure.

"I'm not comfortable with a sweeping statement that it won't have any effect on existing municipal solid waste sites," Sappington said. "That's premature. It's an open question."

The extent of the on-site investigation, and thus whether any of the sites containing Whatcom County

## Coming up

### TUESDAY

- Two key state agencies are unhappy and want some answers.
- State has Whatcom County at the end of its rope.
- The pros and cons of the long-haul approach and having your own dump.

### WEDNESDAY

- What Tri-Cities residents and officials think about getting Whatcom County's garbage.

trash will be included, will be decided jointly by the federal EPA, the state Ecology Department as lead agency for the site and the Benton-Franklin Health District, which has jurisdiction over the Franklin County site, Sappington said.

# Romanian protesters storm building

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The only member of government in the building apparently was Vice Prime Minister Gelu Voican Voiculescu.

Demonstrators seized him, punched him and dragged him onto a balcony, where he was jeered. Soldiers hustled him to his office, where they guarded him from hundreds of demonstrators yelling "Voican! Voican!"

The crowd broke into the building after soldiers hauled away protesters who scaled the building and waved Romanian flags from a balcony. Protesters went into a frenzy, tearing iron bars from the carpet in front of the building.

Protesters told the crowd one man who was hauled away had been shot, prompting cries of "Assassins! Murderers!"

More than 1,000 people in front of the building cheered as protesters smashed the windows and glass

doors. Hundreds surged inside. Infantry reinforcements arrived a short time later.

Voiculescu told The Associated Press the demonstration caught authorities unprepared, with not enough paratroopers on hand to contain the crowd.

He said, "The only thing left to do would have been to shoot at the people. The army's job is not to shoot at the people. Let them run around."

He accused opposition parties of inciting the violence and charged that they were using the Securitate, the hated secret police under Ceausescu.

Protesters shouted that the government had not disbanded the Securitate as it had promised. "The only solution is another revolution!" they yelled.

They failed to find Iliescu, who recently moved his office to the old Grand National Assembly building several miles away, headquarters for the provisional ruling council.

Rampaging demonstrators broke windows, dug through office cabinets and hurled books by Ceausescu and Communist Party manuals to the screaming crowd outside.

Scores of supporters of the National Salvation Front, which took power after the revolution, began a small counterdemonstration, crying, "Terrorists! Terrorists!"

Anti-government demonstrators included young and old, students and workers. They said they belonged to no particular political party.

"What we want is democracy," said student Cezar Rasuceanu, 22.

Anger has built since the National Salvation Front said it planned to take part in May elections. The Front then gave up power and the Council of National Unity was formed.

Opponents have accused the Front of packing the council and seeking a return to one-party rule.

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# Trash trucking raises liability questions

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torney Barbara Lither, branch chief for the Hazardous Waste Office of the U.S. Environmental Protection Agency's regional counsel.

However, the law empowers EPA to pursue other "potentially responsible parties" along the waste stream as well, including the landfill operators, haulers and the governmental jurisdictions where the trash was generated in the first place. That could mean Whatcom County or the city of Bellingham.

"Nothing is specified that requires us to go after one category or another," Lither said.

State Department of Ecology official Randy Martin put it more bluntly from the state's point of view.

"We go after everybody," said Martin, environmental planner in the department's Solid and Hazardous Waste Program. "Until we get our (cleanup) money back, we just look for a deep pocket. And we keep going until we get our money. We're supposed to recover the money. If there's a dump operator with little or no money and there's a political subdivision with millions, it doesn't take a genius to figure out where we're going."

If the evidence is clear that Whatcom County trash was the source of the contamination, "there's no defense" under the Superfund law, according to attorney John Hamill, the EPA's senior associate regional counsel.

And if the evidence fails to finger the source, private and public interests in Whatcom County aren't off the financial liability hook, Lither said.

That could be pertinent at Pasco Sanitary Landfill, which melds together Whatcom County waste with trash from parts of three other counties.

If Whatcom County's waste is commingled at the site, and the law can find no divisibility of responsibility, one or all can be held responsible, she said.

Both physically and legally, "you could be put into bed with an unwanted bedfellow," Hamill said.

The largest single source of the estimated 200 to 250 tons of solid waste generated in Whatcom County daily comes from the city of Bellingham, where more than 70 tons of unrecycled trash is tossed by residents.

Nevertheless, none of the private-party contracts that led to the startup of long hauling two weeks ago was reviewed by the city, according to City Attorney Bruce Disend.

"The city ought to be more attentive as to its liability when its waste is indiscriminately co-mingled at burial," Hamill said.

But Disend said, "It's like any potential liability: You have to prove it."

Moreover, he said, the city's municipal solid waste stream "hasn't the sorts of sources that generate hazardous wastes."

In the event of the city being a defendant in a government action seeking pollution penalties and cleanup costs, "I assume that would reduce our liability," he said.

That notwithstanding, Hamill said, "I've certainly seen in courts where people are just swept up when responsibility is fixed. CERCLA is like a bear trap. The CERCLA law goes farther in a lot of areas than Congress may have intended."

That could prove true for the several private parties involved in the Whatcom-to-Pasco long-haul contract, according to Hamill, despite the assertion by Recomp Co. Vice President Ken Bell that "we're comfortable with where we sit in liability questions" although "you can't mitigate it completely."

Bell's Denver-based company receives virtually all of Whatcom County's solid waste at its Slater Road incinerator and ships out about half or more of it to Pasco Sanitary Landfill six days a week. Other parties to the deal include Lynden businessman John Hoksbergen, who put the arrangement together, and Lynden feed grain transporter Martin Ruiter, whose Martin's Feed Co. trucks cart the garbage here.

Dump owner-operator Larry Dietrich put "hold-harmless" clauses in his contracts in an effort to absolve Recomp and others from certain environmental liabilities.

Nevertheless, "even an indemnification by the landfill won't protect you if he's not financially covered when the time comes," Hamill said. "He's only as good as his pocket is deep. You can't get blood from a turnip."

"I wouldn't minimize the risk the city (of Bellingham) is facing," he continued. "The first person who ex-

ercises controls and dispenses material as unneeded is the generator (under the law), and the bills that come in for CERCLA are astronomical. In the millions."

However, while acknowledging the potential liability for the city and county are there, several private and public officials see it as minimal, or unlikely to arise at all.

"Generally the (landfill) owner-operator is liable," said Bob Kiewit, hazardous waste coordinator in the EPA's Washington Operations Office. "Potentially, all generators are liable, but unless you're shipping industrial waste, Whatcom County's liability is very small."

Carol Fleskes, who runs the Hazardous Waste Investigations and Cleanup Program for the state Department of Ecology, goes even further.

"I don't see the city or county having a liability, because they've never taken possession of it (the waste)," she said. "We get the local governments involved when they own or operate it (a landfill)."

Seattle attorney Dick Ford, Whatcom County's legal adviser on solid waste matters, maintained that to be found liable, the Superfund law requires that "you have to be in control of actual disposal in the waste chain, and the county isn't in that. It would be difficult, if not necessarily impossible, to show that the county is a party that fits into the liability definitions of CERCLA. It's remote. (But) that could change in the future, if the county gets more directly involved."

One person who will have a lot to say about whether it does is Whatcom County Executive Shirley Van Zanten, who views the legal situation now, and in the future, with equanimity.

"No matter what government does, if government acts, there's potential liability," Van Zanten said. However the liability potential in this instance is no greater than if the waste were being disposed of in Whatcom County, she maintained.

"We have no legal ties or responsibilities" in the long-haul deal, she said.

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